IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 25564 of 2007(R)

PETITIONER:

THOMAS JOSEPH, AGED 52 YEARS,
S/O JOSEPH, ALANCHERIL HOUSE,
RAMANKARI KARA, ALAPUZHA DISTRICT.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
SECRETARY, DEPARTMENT OF TAXES,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM.

3. THE ASST. EXCISE COMMISSIONER,
KOTTAYAM.

4. KERALA STATE BEVERAGES CORPORATION,
REPRESENTED BY ITS M.D., THIRUVANANTHAPURAM.

5. MANAGER,
KERALA STATE BEVERAGES CORPORATION,
KOTTAYAM.

6. A.T.PRADEEP, S/O THANKAPPAN,
S/O THANKAPPAN, ANJILIMOOTTIL HOUSE,
THENGANA, CHENGANASSERY, KOTTAYAM.

R1 TO R3 BY GOVT. PLEADER SRI. P.K. RAVIKRISHNAN.
R4 & R5 BY ADV. SRI.MILLU DANDAPANI
R6 BY ADV. SRI.C.S.MANU, SRI.S.K.PREMRAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC. 25564/2007.

APPENDIX

PETITIONER'S EXTS:

EXT. P1 : COPY OF THE G.O. DATED 22.12.2006.

EXT. P2 : COPY OF THE JUDGMENT DATED 23/2/2007.

EXT. P3 : COPY OF THE REPRESENTATION DATED 3/1/2007 BEFORE RESPONDENTS 3 TO 5 BY THE PETITIONER.

EXT. P4 : COPY OF THE G.O. DATED 6/8/2007 ISSUED BY THE FIRST RESPONDENT.

EXT. P5 : COPY OF THE ORDER DATED 20.8.2007 ISSUED BY THE 3RD RESPONDENT.

K.M.JOSEPH, J.

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WP.(C) No.25564 of 2007

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Dated this the 10th day of October, 2007

JUDGMENT

Case of the petitioner in brief is as follows:

Petitioner is running a toddy shop at the present place from the year 2002. According to him there are 22 employees. An out let of the Kerala State Beverages Corporation was functioning at Manimala. The complaint raised by the petitioner in this case is mounted against the order dated 6.8.2007 passed by the Government which is subsequently produced as Ext.P4. By Ext.P4 Government has apparently in purported exercise of power under Section 18A of the Abkari Act read with sub-rules (4) and (5) of Rule 4 of the Kerala Abkari Shops Disposal Rules, 2002 amended the earlier notification whereby the fourth respondent is permitted to have an outlet in Thengana, Changanassery Range. According to the petitioner the outlet was functioning at Manimala. It is pointed out to be in the Kanjirappally Range. There is reference to a writ petition filed by the licensee of a toddy shop in Manimala group, one C.N.Chandrabhanu. According to

him the sixth respondent, a cousin of Sri.A.V. Rassal, the Area Secretary of CPM is having a building at Thengana and the fourth respondent is proposed to give a monthly rent of Rs.12,000/-. Ext.P2 is the judgment of this court recording the submission of respondents 4 and 5 in the writ petition filed by the petitioner when he came to know the attempt to shift the outlet to the building owned by the sixth respondent. Respondents 4 and 5 submitted that there was no proposal. Thereafter a review petition was filed by the fourth respondent pointing out the mistake in making the submission. The review was allowed and the writ petition is stated to be pending. It is stated that there is no scope for getting profitable business for a KSBS outlet in Thengana since it is in between Changanassery and Vakathanam. It is stated that there are KSBC outlets at Changanassery, which is only 3 kms., away from Thengana and one at Vakathanam, which is only 2 kms., away from Thengana. It is also stated that one more outlet can profitably function within Changanassery Municipality. Petitioner filed Ext.P3 representation. It is thereafter that Ext.P4 was passed shifting the foreign liquor shop to the building owned by the sixth respondent.

2. I heard counsel appearing for the parties.

3. Sri. Philip Mathews would contend that petitioner is really

aggrieved. He would point out the circumstances in which power can be exercised under Sub Rule 5. According to him those circumstances are not present to justify the passing of Ext.P4 and the consequential order as Ext.P5. According to him the notification has to be made fixing the number of shops in each range and Taluk and also the limits and the period are to be reflected in a notification to be issued before the first day of April every year. It is thereafter he points out that sub rule (5) empowers Government to notify the number of foreign liquor shops in each range or Taluk at any time if the Government is satisfied that the number of shops are not sufficient. He would further contend that the petitioner had started the business on the basis of the promise held out as he looked to the notification published under sub rule (4) of Rule 4. The shifting of the outlet of KSBC will affect the business of the petitioner, it is contended. He further alleges malafides. He also contends that in fact public interest will be affected as KSBC is without any basis paying Rs.12,000/- as rent and it is an outflow from public exchequer.

4. Per contra, learned counsel appearing for respondents 4 and 5 points out that petitioner is actually vending toddy and that his shop is more than 200 meters away. Learned counsel for the petitioner submits

that it is actually situated 200 meters away from the building where FL3 licence shop is shifted pursuant to Ext. P4. When locus standi was questioned, learned counsel for the petitioner relies on the decision of the Apex Court reported in **Sai Chalchitra v. Commissioner** ((2005(3) SCC 683). That was a case where the High Court dismissed the writ petition finding that the petitioner did not have locus standi finding that the petitioner was running a cinema hall. The Commissioner had granted a licence. The Commissioner had set aside the order of the District Magistrate cancelling the licence given to run a video parlour. It is to be noted that there is a distinction in the facts of this case. I would think that in facts the petitioner does not have locus standi. The petitioner is admittedly vending toddy. The challenge is against the location of a foreign liquor shop. In the decision of the Apex Court it was a tussle between a person running a cinema hall and a person seeking to run a video parlour. In a video parlour as in a cinema hall the customers patronise both for viewing films. In such circumstances it is quite clear that it may not be possible to hold that the person running a cinema hall will not be affected by the grant of licence to a person to run a video parlour. Here the petitioner is running toddy shop and he is canvassing the grievance against the running of foreign

liquor shop. Though both will come under the definition of 'liquor' under the Abkari Act, it is clear that it cannot be said that both the commodities are the same generally. It is also not to be overlooked, that in fact the toddy shop of the petitioner is located 200 meters away from the KSBC shop. Of course learned counsel for the petitioner points out that there is no counter affidavit justifying the grant. I would not think that in the facts of this case I should exercise my discretionary and extraordinary jurisdiction under Article 226 in favour of the petitioner.

The writ petition is dismissed. Learned counsel for the petitioner submits that the petitioner may approach the authorities in this regard. I make it clear that this judgment will not stand in the way of the petitioner approaching the second respondent.

(K.M. JOSEPH, JUDGE)

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